Supreme Court, U.S.
FILED
MAR 4 1996
CLERK

No. 95-1291

(2)

In The

Supreme Court of the United States

October Term, 1995

DIANN HARRIS CARTER, et al.,

Petitioners,

v.

STANLEY MROZOWSKI, et al.,

Respondents.

On Petition For Writ Of Certiorari
To The Supreme Court Of Pennsylvania

RESPONDENTS' BRIEF IN OPPOSITION

WILLIAM A. FETTERHOFF, Esq.
Counsel of Record
200 N. Third Street, Suite 800
Harrisburg, PA 17101
(717) 232-7722

JOSHUA D. LOCK, Esq.
106 Walnut Street
Harrisburg, PA 17101
(717) 234-7025

Attorneys for Respondents: Dauphin County MH/MR Case Management Unit, Dauphin County Counseling Center, Gantt, Bard, Minnix, Loomis, Reisinger, Dunlap, and Urban

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

10 pp

STATEMENT OF THE QUESTION PRESENTED

MAY PENNSYLVANIA REQUIRE THAT COMPLAINANTS FILING ACTIONS IN STATE COURT WHICH RAISE BOTH STATE AND FEDERAL CLAIMS COMPLY WITH THE ORDINARY PLEADING STANDARDS SET FORTH IN THE PENNSYLVANIA RULES OF CIVIL PROCEDURE WHICH ARE UNIFORMLY APPLICABLE TO ALL CLASSES OF CIVIL ACTIONS, AND DO NOT UNDULY BURDEN ACTIONS AUTHORIZED BY FEDERAL LAW.

TABLE OF CONTENTS

Page

STATEMENT OF THE QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

STATEMENT OF JURISDICTION 1

STATEMENT OF THE CASE 1

PROCEDURAL HISTORY 1

STATEMENT OF FACTS 10

REASONS FOR DENYING THE WRIT 16

PENNSYLVANIA MAY REQUIRE THAT COMPLAINANTS FILING ACTIONS IN STATE COURT WHICH RAISE BOTH STATE AND FEDERAL CLAIMS COMPLY WITH THE ORDINARY PLEADING STANDARDS SET FORTH IN THE PENNSYLVANIA RULES OF CIVIL PROCEDURE WHICH ARE UNIFORMLY APPLICABLE TO ALL CLASSES OF CIVIL ACTIONS, AND DO NOT UNDULY BURDEN ACTIONS AUTHORIZED BY FEDERAL LAW 16

CONCLUSION 28

TABLE OF AUTHORITIES

Page

CASES

Bloom v. Dubois Regional Medical Center, 409 Pa.Super. 83, 597 A.2d 671 (1991) 22

Bradt v. Smith, 634 F.2d 796 (5th Cir. 1981), cert. denied 454 U.S. 830, 102 S.Ct. 125 16

Brown v. Western R. Co. of Alabama, 338 U.S. 294, 70 S.Ct. 105 (1949) 17, 18, 19, 20, 23

Cianfrani v. Commonwealth, State Employees' Retirement Board, 505 Pa. 294, 479 A.2d 468 (1984) 21

Davis v. Wechsler, 263 U.S. 22, 44 S.Ct. 13 (1923) 17, 18

Feingold v. Hill, 360 Pa.Super. 539, 521 A.2d 33 (1987), appeal denied 515 Pa. 607, 529 A.2d 1081 21

Felder v. Casey, 487 U.S. 131, 108 S.Ct. 2302 (1988) 17, 18, 19, 23

Foster v. Peat Marwick Main & Co., 138 Pa.Cmwlth. 147, 587 A.2d 382 (1991) 23

Garrett v. Moore-McCormack Co., 317 U.S. 239, 63 S.Ct. 246 (1946) 26

Gekas v. Shapp, 469 Pa. 1, 364 A.2d 691 (1976) 20

Giffin v. Chronister, 151 Pa.Cmwlth. 286, 616 A.2d 1070 (1992) 22

H.M. Bickford Co. v. Speigle, 384 Pa. 227, 120 A.2d 167 (1956) 21

Jackson v. Southeastern Pennsylvania Transportation Authority, 129 Pa.Cmwlth. 596, 566 A.2d 638 (1989), appeal denied 527 Pa. 656, 593 A.2d 426 22

TABLE OF AUTHORITIES – Continued

Page

Jewell v. City of Covington, Ga., 425 F.2d 459 (5th Cir. 1970), cert. denied 400 U.S. 929, 91 S.Ct. 195 25

Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, ___ U.S. ___, 113 S.Ct. 1160 (1993) 26, 27

Local No. 163, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America v. Watkins, 417 Pa. 120, 207 A.2d 776 (1965) 21

Maine v. Thiboutot, 448 U.S. 1, 100 S.Ct. 2502 (1980) 25

Martinez v. California, 444 U.S. 277, 100 S.Ct. 553 (1980) 25

Moten v. American Linen Supply Co., 155 F.R.D. 202 (D. Kan. 1994)..... 25

Rader v. Baltimore & Ohio R. Co., 108 F.2d 980 (7th Cir. 1940), cert. denied 309 U.S. 682, 60 S.Ct. 722 16

UNITED STATES CONSTITUTIONAL PROVISIONS

Due Process Clause, Fourteenth Amendment 16

Supremacy Clause, Article VI, Section I 16

PENNSYLVANIA CONSTITUTIONAL PROVISIONS

The Judiciary, Judicial Administration, Article V, Section 10(c) 20

FEDERAL STATUTES

28 U.S.C. §1257..... 1

42 U.S.C. §1981..... 26

TABLE OF AUTHORITIES – Continued

Page

42 U.S.C. §1982 26

42 U.S.C. §1983 ..... 3, 16, 19, 25

42 U.S.C. §1985 3

45 U.S.C. §51 17

46 U.S.C. §688 26

STATE STATUTES

12 P.S. §386 21

17 P.S. §61 20

42 Pa.C.S.A. §1722(a) 21

50 P.S. §4301, et seq 10

RULES OF THE UNITED STATES SUPREME COURT

Rule 10(b) 1

FEDERAL RULES OF CIVIL PROCEDURE

F.R.Civ.P. 1 16

F.R.Civ.P. 8 ..... 16, 25, 26, 27, 28

F.R.Civ.P. 9 ..... 23, 26

F.R.Civ.P. 81 26

PENNSYLVANIA RULES OF CIVIL PROCEDURE

Pa.R.Civ.P. 126 ..... 20, 22

Pa.R.Civ.P. 1017-1035 21

Pa.R.Civ.P. 1019 ..... 3, 16, 19, 21, 23

TABLE OF AUTHORITIES – Continued

Page

OTHER AUTHORITIES

Goodrich Amram 2d, Vol. 2, §1019 (1991) 22

Standard Pennsylvania Practice, Vol. 4, §§21:32-21:67 (1993) 22

Wright & Miller, *Federal Practice and Procedure, Civil 2d*, §1012 (1987) 17

APPENDIX

Appendix A: Opinion and Order of the Dauphin County Court of Common Pleas filed September 20, 1993 ..... 1a

Appendix B: Pennsylvania Rule of Civil Procedure 1019 ..... 22a

Appendix C: Employees of the Rosalie G. Handler Center and Successor Agencies By Race and Gender 24a

STATEMENT OF JURISDICTION

Petitioners incorrectly cite Supreme Court Rule 10.1(b), [now Rule 10(b)], as providing the basis for jurisdiction. However, jurisdiction of the Supreme Court appears to be based upon 28 U.S.C. §1257.

STATEMENT OF THE CASE

PROCEDURAL HISTORY

Procedural History of This Action

The original Complaint in the present action was filed by the Plaintiffs (Petitioners herein) in the Court of Common Pleas of Dauphin County, Pennsylvania on June 3, 1992. An Amended Complaint was then filed on June 4, 1992. The only difference between the original Complaint and the First Amended Complaint was that one of the named Plaintiffs was removed from the action.

On July 7, 1992 Preliminary Objections to the First Amended Complaint were filed in behalf of all Defendants (Respondents herein). On September 20, 1993 an Opinion and Order was issued by the Honorable Joseph H. Kleinfelter which sustained the Defendants' demurrers to all counts in the First Amended Complaint, while also granting leave to the Plaintiffs to file a Second Amended Complaint. See Opinion and Order of Judge Kleinfelter attached as Appendix A hereto. On October 12, 1993 the Plaintiffs filed a Second Amended Complaint. On October 29, 1993 the Defendants filed additional Preliminary Objections. On May 10, 1994 a second Opinion and Order was issued by a second judge of the

Dauphin County Court of Common Pleas, the Honorable Todd A. Hoover, which again sustained all of the Defendants' demurrers and dismissed the Second Amended Complaint with prejudice. See Opinion and Order of Judge Hoover at Appendix C of the Petition For Writ of Certiorari. The case was then appealed to the Commonwealth Court of Pennsylvania, which heard the matter upon the record, briefs, and oral argument. On June 2, 1995 the Commonwealth Court issued an Opinion and Order affirming the dismissal by the Court of Common Pleas. See Opinion and Order of the Commonwealth Court at Appendix B of the Petition For Writ of Certiorari. The Plaintiffs next filed a Petition For Allowance of Appeal in the Supreme Court of Pennsylvania, which denied the Petition on November 16, 1995. See Order of the Supreme Court of Pennsylvania at Appendix A of the Petition For Writ of Certiorari. The present Petition For Writ of Certiorari was filed in the Supreme Court of the United States on February 14, 1996.

The Dismissed Second Amended Complaint in This Action

As much as can be determined from the Second Amended Complaint in this action, the two broad claims of the Plaintiffs are that they were unlawfully discharged from their employment and that they were defamed. The federal civil rights claims are but alternative legal theories upon which the Plaintiffs reiterate their state law claims that: a) they were terminated from employment; and b) this termination was accomplished through a vague conspiracy which included as a weapon the use of

defamatory words, which words unfortunately were never set forth in any version of the Complaint.

The Second Amended Complaint consists of thirteen counts. Counts I (42 U.S.C. §1983), II (42 U.S.C. §1985), III (Civil Conspiracy To Wrongfully Discharge, Defame, and Discriminate), XII (Wrongful Discharge), and XIII (Violation of Pennsylvania Constitution) are all grounded on the theory that the Plaintiffs were legally entitled to employment at the Rosalie G. Handler Center and were terminated as a result of a conspiracy among the twenty-one (21) defendants. Neither the manner of the employment termination nor the basis for the allegation of conspiracy were ever stated. Counts IV (Group Defamation), and V through XI (Individual Defamation) express in form the general grievance regarding acts of defamation which is repeated throughout the Second Amended Complaint as a whole. The problem with the entire Second Amended Complaint, as objected to by the Defendants and as held by all of the Pennsylvania Courts which have reviewed this case, is that no facts were ever pled to support the extravagant conclusions alleged. Racial bias, bias against women, bias against lesbians, bias against gay men, and intricate, multi-party conspiracies are all repeatedly alleged against every individual, governmental, or institutional Defendant in this case, but none of these accusations are founded upon a simple and concise summary of the material facts as required by Pennsylvania Rule of Civil Procedure 1019(a). The Second Amended Complaint is a rambling, histrionic text of one-hundred and forty-five (145) repetitious paragraphs filled with argument, indignation, sweeping accusation, angry denunciation, vitriolic contempt, immoderate rhetoric,

irrelevant opinions, and grand legal conclusions. The Plaintiffs were found by every Court which reviewed the matter to have failed to set forth even one coherent cause of action under any of the multiple theories of state and federal law which the Complaint propounds. Not once in the entire document do the Plaintiffs simply set forth either the manner of their alleged dismissal from employment or the words they deem defamatory. No plainly stated fact is supplied anywhere in the Complaint to provide notice to any Defendant as to the alleged defamatory statements, when made, or where, or to whom. Indeed, the Complaint makes a sustained demonstration of carefully avoiding even the minimal particularity which might allow the opportunity for answer or rebuttal. Similarly, on the unlawful discharge theory, the Plaintiffs never state why they decided they were discharged, or by whom, or by what manner of notice.

Procedural History of Prior Actions

The present case is only the most recent episode in a prolonged series of judicial and administrative proceedings arising out of a contractual dispute during 1989 and 1990 between the Dauphin County Mental Health and Mental Retardation (MH/MR) Program, a statutory agency of Dauphin County, and the Rosalie G. Handler Center, a private, non-profit provider of MH/MR services formally independent but almost entirely sustained by funding from Dauphin County. Plaintiff and Petitioner here Rosemary Madl was the Executive Director of the Handler Center between January 2, 1989 and June 15, 1990. Plaintiff and Petitioner here Rodger Beatty was the

Deputy Director of the Handler Center between April 10, 1989 and June 15, 1990. The other Petitioners in this action were also all employees of the Handler Center for various periods of time through June 15, 1990.

The First Legal Action

The first legal action in this general controversy was a Complaint filed to both law and equity in the Dauphin County Court of Common Pleas (No. 4871 Equity 1990) on April 12, 1990, by the Rosalie G. Handler Center, signed and verified by Petitioner here Rosemary Madl, designating as Defendants Dauphin County, Dauphin County Human Services Director Ralph Moyer, and Dauphin County MH/MR Administrator Stanley Mrozowski, all Defendants here. The first action was generally aimed at preventing the exercise of governmental regulatory authority by the Dauphin County MH/MR Program over the Rosalie G. Handler Center, which was regarded as "interference" by the Handler Center. The action was ultimately aimed at preventing the Dauphin County MH/MR Program from discontinuing the Handler Center as the provider of Case Management services after the expiration of the then current contract on June 30, 1990. The Case Management portion of the contract was alone worth nearly $1.5 million dollars, and was funded at 100% by Dauphin County. The legal action thus sought to enjoin the County from the termination of the contract; to compel a renewal of the contract for the next fiscal year; and to enjoin various forms of alleged undue governmental "interference" into the Handler Center's "private" affairs by fiscal and program auditors of the Dauphin County MH/MR Program. The Complaint in that first

case encompassed counts for wrongful interference with relations between the Handler Center and its employees, wherein Dauphin County was accused of attempting to destroy the Handler Center and deprive the Center of its employees, or to deprive employees of their employment at the Center. The Complaint further included a count alleging defamation of the Center by Stanley Mrozowski, Dauphin County MH/MR Administrator, and Ralph Moyer, Dauphin County Human Services Director. As in the present Second Amended Complaint, various illicit and corrupt motives were alleged against Dauphin County, Mr. Moyer, and Mr. Mrozowski. However, despite the sweeping and intemperate accusations made throughout that Complaint, no accusation was anywhere made by or on behalf of the Handler Center or any employee of the agency (including all Plaintiffs here) that the illicit motives for the intended "destruction" of the Handler Center were discriminatory in nature, based on race, sex, sexual orientation, age, or other class-based animus. An Answer With New Matter was filed by Dauphin County on April 23, 1990. No further action occurred on the record in the initial case, even while efforts to resolve the dispute were unsuccessful.

The Second Legal Action

The second legal action in the history of this dispute was a Complaint in equity filed in the Dauphin County Court of Common Pleas (No. 4880 Equity 1990) on May 25, 1990, by the County of Dauphin and the Dauphin County MH/MR Program against the Rosalie G. Handler Center, seeking to enjoin the Handler Center and its officers from continuing to refuse access by the County to

the various financial, clinical, program, and personnel records related to Case Management services. The County had notified the Handler Center on April 20, 1990 that the existing contract would not be renewed, and repeated that notice in the Complaint filed May 25, 1990. On June 6, 1990 the Handler Center filed an Answer and Counterclaim, seeking as in the first action, albeit now more directly, to enjoin Dauphin County from terminating any portion of the contract prior to the expiration of that contract on June 30, 1990, and seeking as well to compel Dauphin County to renew the entire contract, despite the fact that a contrary decision regarding Case Management services had been made by the County Administrator of the MH/MR Program, the County Human Services Director, and the Dauphin County Commissioners.

The Answer and Counterclaim of the Handler Center again recited various broad and unsubstantiated allegations of corrupt or illicit motive. Once again, no claim was anywhere made in the second action by or on behalf of the Handler Center, or any employee of the agency including the Plaintiffs here, that the "motives" for the "destruction" of the Handler Center were discriminatory in nature, based on race, sex, sexual orientation, age, or any other class-based animus. Thus, in two prior proceedings in Dauphin County Court based on the same facts, no claim of discrimination was raised despite the clear opportunity to raise such claims amid the numerous other claims and allegations which were made by the Handler Center and the Plaintiffs here specifically in behalf of the continued employment of the Center's employees, and specifically in protest of alleged illegal acts and conspiracies, corrupt motives, and episodes of

defamation, all aimed, by allegation, at this same "Handler management" who have again filed the present suit.

On June 15, 1990 Dauphin County and the Dauphin County MH/MR Program filed an Answer To Counterclaim and Request For Supplemental Injunction, requesting emergency Orders authorizing Dauphin County to assume immediate supervisory authority over the entire operation of the Handler Center. This request was supported in the record by sixteen (16) affidavits by Handler Center employees detailing pervasive inefficiencies and severe maladministration at the agency.

On June 15, 1990, the Honorable James Buckingham of the York County Court of Common Pleas, Specially Presiding, issued two Orders sustaining the full regulatory authority of the Dauphin County MH/MR Program and granting the request of Dauphin County to control and supervise the services provided at the Handler Center. These regulatory powers were principally enforced by the Court assigning to Dauphin County control of all the financial, personnel, programmatic and other records of the agency, and vesting the County with leasehold rights to premises then occupied by the Handler Center although paid for with County allocated funds. On June 19, 1990 a Second Supplemental Order was issued by the Court directing an audit of the Handler Center by the Pennsylvania Department of Public Welfare, and appointing Dauphin County to act as Trustee of various agency assets, which were almost entirely County owned in any case. On June 22, 1990 a Third Supplemental Order was issued to protect the agency mails from further re-direction or confiscation by disaffected Handler Center agents; and directing the return of all the principal financial

records of the agency showing the status and disposition of State and County funds, which records had been unlawfully removed from agency premises after the initial Court Orders of June 15, 1990.

The Bankruptcy Action

On June 22, 1990 persons purporting to act for the Rosalie G. Handler Center filed a Petition In Bankruptcy in the United States District Court for the Middle District of Pennsylvania (M.D. 1-90-01052), seeking to regain control of assets assigned to Dauphin County by state court Orders, seeking to avoid those state court Orders, and to re-litigate matters which had been previously resolved. On June 29, 1990 Dauphin County filed a Motion For Abstention From Bankruptcy Pending State Trusteeship.

Settlement of First Three Actions

On July 24, 1990 a general Settlement Agreement was executed between Dauphin County (with the Dauphin County MH/MR Program) and the Board of Directors of the Rosalie G. Handler Center. The main elements of this Settlement were that the Handler Center assigned all of its assets to the County, while the County assumed all of the debts of the Handler Center, and assumed full management and control over all the operations of the agency. Twenty-Two (22) Handler Center employees, including the ten (10) Plaintiffs here, most of whom are white, had boycotted the agency after Judge Buckingham's June 15, 1990 Court Orders, refused to return to work, and were paid through the Settlement for their accrued vacation times. The Settlement also resulted in the discontinuance

of all the litigation then outstanding, including the two prior Dauphin County civil actions and the federal bankruptcy action.

Pennsylvania Human Relations Commissions Actions

The next chapter of litigation involved concerted action by fifteen (15) of the twenty-two (22) non-returning Handler Center employees, including all ten (10) Plaintiffs here, in filing complaints at the Pennsylvania Human Relations Commission, the Equal Opportunity Employment Commission (EEOC), and the Harrisburg Human Relations Commission. In respect to all those actions, Dauphin County filed complete Answers with statistical charts demonstrating that the allegations of discrimination were not only false, but that the percentage of minority employees in the successor agencies of the Handler Center was higher than under Plaintiff Rosemary Madl prior to June 15, 1990. See Appendix B hereto. All the Human Relations and EEOC actions were either dismissed by the respective Commissions or withdrawn by the Plaintiffs.

STATEMENT OF FACTS

The Dauphin County Mental Health and Mental Retardation Program is the local governmental agency charged by law with the administration of Federal, State and County funds to provide a wide array of services for the mentally disabled citizens of Dauphin County. See Pennsylvania Mental Health and Mental Retardation Act of 1966, 50 P.S. §4301 et seq.

The present case has its origins in a decision by the Dauphin County Mental Health and Mental Retardation Program not to renew its contract with the Rosalie G. Handler Center for the provision of Case Management Services, Partial Hospitalization, and Outpatient services. The total value of the contract was $2,096,185.00, representing over 85% of all Handler Center revenue.

From January, 1989 through April, 1990 a variety of serious program, personnel, and policy problems had emerged at the Handler Center. These deficiencies at the Handler Center were alone sufficient to justify the County discontinuing the Center as an authorized provider. However, it was not until the days immediately preceding the Court hearing on June 15, 1990 that Dauphin County discovered the most stunning evidence of misconduct and mismanagement at the Handler Center, when sixteen (16) employees of that agency, at great risk to their own employment, came forward to report in great detail and upon personal knowledge the full extent of the crisis at the Handler Center to Dauphin County authorities, in the form of affidavits attached to the Answer To Counterclaim With New Matter and Request For Supplemental Injunction, filed by Dauphin County on June 15, 1990.

On June 15, 1990 a hearing on the conflicting requests for injunctive relief by Dauphin County and the Handler Center was held before the Court of Common Pleas, Judge James Buckingham of the York County Court of Common Pleas, Specially Presiding. Upon review of the contract between the parties, and the pleadings, exhibits, and briefs, Judge Buckingham issued Orders authorizing Dauphin County to terminate the contract; transferring

control of all financial, personnel, program and client records at the Handler Center to Dauphin County; transferring County owned equipment and supplies back to actual County possession; and vesting the County with immediate rights to succeed to the use and occupancy of all premises which had been leased by the Handler Center with County allocated funds for County contracted purposes. The Orders were less sweeping than they seemed, since specific provisions of the contract had unambiguously provided that the County retained title to all assets paid for with County funds, and also retained all rights to the various records used in providing the services funded by the County. The Sheriff of Dauphin County was authorized to secure the premises of the Handler Center at several locations throughout the County, in order to enforce the Orders of the Court and especially to prevent the further removal or destruction of agency records.

Judge Buckingham also entered the following Order from the bench:

> Under the contract and the law, as we have said, where the contract on its face is not subject to any differing interpretation by reasonable people, the Court may and does and should declare as a matter of law that the contract speaks for itself. And we have done that in this case. And, as we have said, we believe that the county does have the right under the contract and the regulations and the Acts of Assembly to terminate this contract. We find that they have the county has declared that the contract should be terminated for whatever reason they believe and in this case what they believe is a fair

> reason for it. We are bound by this and we so order.

That same day, June 15, 1990, Plaintiff and Petitioner here Rosemary Madl, in her capacity as Executive Director of the Rosalie G. Handler Center, issued a written notice to all Handler Center employees that:

> The Board of Directors and the management team of the Rosalie G. Handler Center regretfully inform you that you are furloughed effective at the end of today, Friday, June 15, 1990. We will immediately approve all claims for unemployment compensation.

Next, on the morning of June 18, 1990 the Handler Board Chairman sent a letter to the Office of Mental Health, Department of Public Welfare, canceling Handler's Medical Assistance Provider Agreement, canceling its licenses to operate the partial hospitalization and outpatient programs, and requesting that Medical Assistance monies then due from the Department be forwarded to a post office box.

Among other reasons the wrongful discharge and civil rights claims in the Second Amended Complaint were dismissed for failure to state a claim is that none of the Plaintiffs here were even employees of any of the Defendants, and the Plaintiffs did not attempt to so allege in any version of their Complaint. The theory of the Plaintiffs seems rather to have been that as employees of the Rosalie G. Handler Center they somehow had an entitlement to continued employment at that private agency, and when Dauphin County was authorized by the Court Orders of June 15, 1990 to terminate the existing contract, while the County itself had decided not to

renew (as of July 1, 1990) the contract for the following fiscal year, the Plaintiffs' "right to employment" was thereby "violated" by the County, which was acting in a vague conspiracy with the other twenty (20) Defendants. However, these facts do not make a claim for wrongful discharge, especially as it was Plaintiff Rosemary Madl herself who issued the only termination notice in the entire case, quoted from the record above, the same day (June 15, 1990) that Judge Buckingham issued his Orders. Fortunately, successor agencies did hire all former Handler Center employees who applied for positions. Not one of the ten (10) Petitioners here ever applied for work at the County, or at any of the successor agencies to which the County reassigned the programs formerly contracted to the Handler Center, nor were any such applications for employment ever alleged by any Plaintiff in any version of their Complaint.

Uncontradicted exhibits submitted to the record of all the Pennsylvania Human Relations Commission actions and again in the underlying record of this case (reproduced at Appendix C hereto) show that on June 18, 1990 more than sixty (60) employees of the Handler Center returned to work. Twenty-two (22) employees refused to return to work. Fifteen (15) of the boycotting employees were white, six (6) were black, and one (1) was hispanic. In contrast, there were more black employees (10) who returned to work than joined the boycott (6). As of April 1, 1990 the Handler Center had a total of eighty-two (82) employees, of whom fifteen (15) were black, or 18%. As of September 21, 1990, three months after Dauphin County transferred the same programs to other providers, the total number of employees in the three services was sixty-

eight (68), of whom fifteen (15) were black, or 22%. Thus, not only did more black employees return to work on June 18, 1990 than joined the boycott, but three months later the settled work-force, including new employees, had a higher percentage of black employees than under the administration of Petitioners Rosemary Madl and Rodger Beatty, both of whom are white.

As of June 15, 1990 Handler's management staff was 33% racial minorities and 83% female. As of September 21, 1990 there were eight (8) managers in the Case Management Unit, two (2) of whom were black. There was one (1) manager in the Partial Hospitalization Program, a white female. Accordingly, as of September 21, 1990 management staff for the new Case Management, Outpatient, and Partial Hospitalization Services was 22% black and 78% female.

At the Statement of the Case in the Petition For A Writ of Certiorari, the Petitioners state (p.5) that "Petitioners are ten (10) individuals composed *largely* of black women . . . " (Emphasis added). In fact, only four (4) of the ten (10) Petitioners are black, and the other six (6) Petitioners are white.

The Second Amended Complaint in the present case was dismissed only after an opportunity to amend had been granted and the Plaintiffs had failed for a second time simply to set forth a coherent and concise statement of the material facts such as would disclose a cause of action for conspiracy, discrimination, wrongful discharge, or defamation under any theory of state or federal law.

REASONS FOR DENYING THE WRIT

PENNSYLVANIA MAY REQUIRE THAT COMPLAINANTS FILING ACTIONS IN STATE COURT WHICH RAISE BOTH STATE AND FEDERAL CLAIMS COMPLY WITH THE ORDINARY PLEADING STANDARDS SET FORTH IN THE PENNSYLVANIA RULES OF CIVIL PROCEDURE WHICH ARE UNIFORMLY APPLICABLE TO ALL CLASSES OF CIVIL ACTIONS, AND DO NOT UNDULY BURDEN ACTIONS AUTHORIZED BY FEDERAL LAW.

The proposition of the Petitioners in the instant matter is that the pleading standards applicable to complaints filed in federal district courts pursuant to Federal Rule of Civil Procedure 8(a) should be likewise imposed upon the states in all cases brought in state courts under federal civil rights acts, particularly 42 U.S.C. §1983. The Petitioners optimistically assert that their Second Amended Complaint would have met the notice-pleading standard of F.R.Civ.P. 8(a), and that therefore the dismissal of the case upon their failure to satisfy the fact-pleading standard of Pennsylvania Rule of Civil Procedure (Pa.R.Civ.P.) 1019(a) violated the Due Process Clause of the Fourteenth Amendment and the Supremacy Clause of Article VI, Section I. However, the precedents of this Court do not establish any such general rule.

It is fundamental law that the Federal Rules of Civil Procedure do not govern practice and procedure before state courts. *Bradt v. Smith,* 634 F.2d 796, 799 (5th Cir. 1981), cert. denied 454 U.S. 830, 102 S.Ct. 125; *Rader v. Baltimore & Ohio R.Co.,* 108 F.2d 980 (7th Cir. 1940), cert. denied 309 U.S. 682, 60 S.Ct. 722. Federal Rule of Civil Procedure 1 states that the scope of the Rules is limited to

governing "the procedure in the *United States district courts* in all suits of a civil nature . . . " (Emphasis added) . See generally, Wright & Miller, *Federal Practice and Procedure, Civil 2d,* §1012 (1987). The Supreme Court itself has stated that:

> No one disputes the general and unassailable proposition . . . that States may establish the rules of procedure governing litigation in their own courts. By the same token, however, where state courts entertain a federally created cause of action, the "federal right cannot be defeated by the forms of local practice."

Felder v. Casey, 487 U.S. 131, 108 S.Ct. 2302, 2306 (1988), quoting from *Brown v. Western R. Co. of Alabama,* 338 U.S. 294, 296, 70 S.Ct. 105, 106 (1949).

In *Brown v. Western R. Co. of Alabama, supra,* this Court held that a Georgia rule of practice requiring that a complaint be construed "most strongly against the pleader" (*Id.,* 106) could not be applied to preclude recovery in the state courts on a cause of action under the Federal Employees Liability Act. 45 U.S.C. §51 et seq. The Supreme Court stated that:

> Strict local rules of pleading cannot be used to impose unnecessary burdens upon rights of recovery authorized by federal laws. "Whatever springs the State may set for those who are endeavoring to assert rights that the State confers, the assertion of Federal rights, where plainly and reasonably made, is not to be defeated under the name of local practice." *Davis v. Wechsler,* 263 U.S. 22, 24 44 S.Ct. 13, 14 (1923). (Additional citation omitted). Should this Court fail to protect federally created rights

> from dismissal because of over-exacting local requirements for meticulous pleadings, desirable uniformity in adjudication of federally created rights could not be achieved. (Citation omitted).

Brown v. Western R. Co. of Alabama, supra, 108. The *Felder v. Casey, supra,* decision similarly disapproved procedural hurdles which have the effect of "burdening" the presentation of a federal cause of action in a state court. Thus, in reviewing state pleading and other procedural requirements as applied to federal causes of action, the *Brown* and *Felder* decisions indicate that state rules of procedure will not be set aside as long as they do not represent an "unnecessary burden" on substantive federal rights. States may enforce rules of pleading which are uniform and do not defeat the assertion of federal rights to at least assure, on the standard quoted from *Davis v. Wechsler,* above, that the pleading has been "plainly and reasonably made." In the application of that rule of reason, and to avoid unnecessary burdens on federal rights, it has never been held that state courts are obligated to adopt the notice-pleading standards of the Federal Rules of Civil Procedure.

The procedural burden invalidated by *Felder* was a state notice of claims statute which provided that before an action could be brought in a Wisconsin court against a governmental entity or officer the plaintiff was required to notify the defendant of the circumstances and amount of the claim within 120 days of the occurrence; the plaintiff was then required to wait 120 days for the defendant to grant or refuse the requested relief; and the plaintiff was then obligated to bring suit within six months of

receiving notice that the claim was refused. The Supreme Court held that the notice of claims statute was a "burden" upon federal actions under 42 U.S.C. §1983 since it was not a neutral and uniformly applicable predicate to all civil actions but instead operated directly to limit governmental liability, which limitation of liability was inconsistent with federal law. The Court held that "This defendant-specific focus of the notice requirement serves to distinguish it, rather starkly, from rules uniformly applicable to all suits . . . " *Felder v. Casey, supra,* 2310.

In the present case the state and federal claims of the Petitioners were dismissed for failure of the Petitioners to adequately plead a cause of action under the standard of Pennsylvania Rule of Civil Procedure 1019. See Opinion of the Commonwealth Court of Pennsylvania, p. 4a, Appendix B, Petition For Writ of Certiorari. Unlike the notice of claims rule in *Felder,* Pa.R.Civ.P. 1019 is uniformly applicable to all classes of civil litigation filed in Pennsylvania trial courts. Thus, the argument of Petitioners that Pennsylvania imposes "heightened" pleading standards on federal civil rights actions is erroneous. The pleading rules applicable to federal civil rights actions are identical to pleading rules applicable to all other cases. Likewise, in the language of the *Brown* decision, the Pennsylvania pleading rule here at issue is neither "strict" nor "over-exacting," and does not operate to require "meticulous pleadings" nor to "impose unnecessary burdens upon rights of recovery authorized by Federal laws." *Brown v. Western Railway of Alabama,* 338 U.S. 294, 298, 299, 70 S.Ct. 105, 108 (1949). Moreover, while the Georgia practice rule in *Brown* provided that a civil complaint was to be construed "most strongly against the

pleader," (*Id.*, 106), Pa.R.Civ.P. 126 expressly provides in contrast that:

> The rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. The Court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties.

Indeed, under the precedents by which Pennsylvania courts review the sufficiency of a complaint, all reasonable inferences are drawn *in favor* of the pleader, accepting as true all well-pleaded factual allegations when read in the light most favorable to the plaintiff. *Gekas v. Shapp*, 469 Pa. 1, 364 A.2d 691, 693 (1976). The Petitioners received the benefit of this rule as expressly applied by the Pennsylvania Courts in this case. See Opinion of Judge Todd A. Hoover, p. 10a, Appendix C, Petition For Writ of Certiorari; and Opinion of Judge Joseph H. Kleinfelter, p. 6a, Appendix A, attached hereto.

In 1937 the Pennsylvania Legislature authorized the Pennsylvania Supreme Court to adopt and enforce general rules governing the practice and procedure in civil actions before the County Courts of Common Pleas. 17 P.S. §61 et seq. (repealed). That judicial power was then incorporated into the 1968 Constitution of the Commonwealth of Pennsylvania, Article V, Section 10(c), which provides in relevant part as follows:

> The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts . . . if such rules are consistent with this Constitution and

> neither abridge, enlarge nor modify the substantive rights or any litigant . . .

This provision is now incorporated in equivalent terms in the Pennsylvania Judicial Code, 42 Pa.C.S.A. §1722(a). The particular rules applicable to pleading, Pa.R.Civ.P. 1017-1035, were adopted in 1946 and became effective on January 1, 1947. The principal purpose of these rules was to modernize and liberalize the strict pleading requirements of the Practice Act of 1915, 12 P.S. §386 (repealed). The present pleading standard by which the sufficiency of a complaint is measured is set forth at Pa.R.Civ.P. 1019(a), as follows:

> (a) The material facts on which a cause of action or defense is based shall be stated in a concise and summary form.

The complete text of Pa.R.Civ.P. 1019 is set forth at Appendix B hereto. Rather than constituting a burden on substantive rights, either state or federal, Pa.R.Civ.P. 1019(a) simply requires a plain statement of the "material facts" on which a cause of action is based, set forth "in a concise and summary form." While the Rule does require fact pleading rather than notice pleading, meticulous specificity is not required. *Local No. 163, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America v. Watkins*, 417 Pa. 120, 207 A.2d 776 (1965). A plaintiff is not required to plead evidence. *H.M. Bickford Co. v. Speigle*, 384 Pa. 227, 120 A.2d. 167 (1956). A complaint need only set forth the minimum facts sufficient to show the prima facie elements of the cause or causes of action alleged. *Cianfrani v. Commonwealth, State Employees' Retirement Board*, 505 Pa. 294, 479 A.2d. 468 (1984); *Feingold v. Hill*, 360 Pa.Super. 539, 521

A.2d 33 (1987), appeal denied 515 Pa. 607, 529 A.2d. 1081. A complaint must at least, but also need only give the defendant fair notice of the nature of the plaintiff's claim and should identify the basis of the complaint and the issues involved by summarizing the material facts. *Jackson v. Southeastern Pennsylvania Transportation Authority,* 129 Pa.Cmwlth. 596, 566 A.2d 638 (1989), appeal denied 527 Pa. 656, 593 A.2d 426. Argument, opinion, commentary, conclusions of law, or irrelevant or impertinent averments are not sufficient to sustain a complaint which neglects to simply and concisely set forth the material facts for the cause of action alleged. *Bloom v. Dubois Regional Medical Center,* 409 Pa.Super. 83, 597 A.2d 671 (1991); *Giffin v. Chronister,* 151 Pa.Cmwlth. 286, 616 A.2d 1070 (1992). Damning rhetoric, however impassioned and however presented at length, cannot be substituted for a simple summary of the material facts. The material facts are only those essential to support the cause of action. The *minimum* facts material to the cause will be deemed sufficient, and the failure to plead other or all of the material facts is not a deficiency. No technical recitals are required, since in Pennsylvania pleadings will be liberally construed. Pa.R.Civ.P. 126, quoted above. See generally, 4 *Standard Pennsylvania Practice,* §§21:32-21:67 (1993); 2 *Goodrich Amram 2d,* §1019 (1991).

The pleading standards applied by Pennsylvania courts hardly constitute a burden upon litigants seeking to present either state or federal claims. The Rules are uniformly applied to all classes of civil litigation. The only actions in which "heightened" pleading standards are imposed are those in which fraud or mistake is

alleged, as provided by Pa.R.Civ.P. 1019(b) in a requirement nearly identical to that imposed on the same class of action in federal court by F.R.Civ.P. 9(b). Even in cases sounding in fraud the rules of pleading are still liberally construed so as not to introduce technical pleading hurdles, render the process burdensome, or prevent legitimate actions from going forward. *Foster v. Peat Marwick Main & Co.*, 138 Pa.Cmwlth. 147, 587 A.2d 382 (1991).

It is therefore plain that Pennsylvania does not utilize its Rules of Civil Procedure to impose special or needless burdens upon the presentation of federal claims. Federal civil rights plaintiffs are required to satisfy only the same liberal pleading standards as are applied to all other cases. Those standards do not "dig into substantive rights" nor foreclose federal claims which have been "plainly and reasonably made," nor "impose unnecessary burdens upon rights of recovery authorized by federal laws" as forbidden by this Court in *Brown v. Western Railway of Alabama*, 338 U.S. 294, 296, 298, 299, 70 S.Ct. 105, 106, 108 (1949). Indeed, the Pennsylvania pleading rules do nothing other than require that causes of action in a complaint be "plainly and reasonably made" in order to give fair notice to the defendants, define the issues, and allow a responsive answer setting forth available defenses. The rules do not operate to minimize liability for particular defendants or particular causes of action, nor to establish strict conditions precedent to a right of recovery, nor to otherwise burden the vindication of federal rights in state court, as was found by this Court in *Felder v. Casey*, 487 U.S. 131, 108 S.Ct. 2302 (1988).

The Petitioners in this case were given an opportunity to amend their Complaint after the first set of

preliminary objections and initial judicial review. Judge Kleinfelter in that initial decision (Appendix A hereto) analyzed each count of the First Amended Complaint, identified the deficiencies therein, and even provided guidance to the Plaintiffs as to the averments which would be necessary to correct those deficiencies. Rather than comply with that Opinion the Petitioners made only minor editorial changes and rhetorical additions to the Complaint. Thus, upon subsequent review at the trial court level, upon a second set of preliminary objections, Judge Hoover stated as follows:

> Plaintiffs have failed to state a cause of action under each of their thirteen counts. Although this is the first time plaintiffs have asserted a claim pursuant to the Pennsylvania Constitution and we have previously noted the court's "positive duty" to give the plaintiff opportunity to amend, we find that under the present circumstances such an opportunity is properly denied.
>
> There is ample precedent for granting leave to amend where there is a good chance the complaint could be amended successfully. It was for this reason that this court previously granted plaintiffs leave to amend with specific direction as to the areas where the court identified deficiencies in fact pleading.
>
> We turn to the case of *Framlau Corp. v. County of Delaware,* (citation omitted) wherein plaintiffs had already exercised two opportunities to amend. Where the court found the allegations in the amended complaint were the same as those in the original complaint, it was the court's "opinion that a third or fourth

> attempt would be as futile as the first two." This court shares this sense of futility. Plaintiffs' inability to incorporate this court's directions in amending its complaint does not bode well for any future efforts. This holds true even for the claims asserted under the Pennsylvania Constitution which mirror the lack of factual allegations to support their broad conclusions of law which prevail throughout the rest of the complaint, despite judicial directives to the contrary.

Opinion of Judge Todd A. Hoover, p. 23a-24a, Appendix C, Petition For Writ of Certiorari. Even Federal Rule of Civil Procedure 8(a), requiring only "a short and plain statement of the claim showing that the pleader is entitled to relief" does not constitute a license for baseless litigation in which a complaint consists only of arguments, opinions, and conclusions of law. *Jewell v. City of Covington, Ga.*, 425 F.2d 459 (5th Cir. 1970), cert. denied 400 U.S. 929, 91 S.Ct. 195; *Moten v. American Linen Supply Co.*, 155 F.R.D. 202 (D. Kan. 1994).

The citation of *Martinez v. California*, 444 U.S. 277, 100 S.Ct. 553 (1980) by the Petitioners for the proposition that "federal standards should prevail in converse – *Erie* 42 U.S.C. §1983 cases where federal and state rules conflict" (p. 10) is inapposite, since the pleading standards of the California courts were not at issue. In *Martinez* this Court actually *approved* the holding of the California courts that no claim is stated under 42 U.S.C. §1983 against a parole board for a murder committed by a parolee. Similarly, *Maine v. Thiboutot*, 448 U.S.1, 100 S.Ct. 2502 (1980) held only that the Civil Rights Attorney's Fees Awards Act of 1976, making attorneys fees available to the prevailing party in any action or proceeding to enforce a provision

of 42 U.S.C. §§1981, 1982, 1983, and other civil rights statutes, was applicable to all such claims whether brought in federal or state court. *Maine* thus clearly concerned the application of substantive federal law in state courts, and did not concern rules of pleading or procedure. Likewise, *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 63 S.Ct. 246 (1946) concerned only the obligation of state courts to recognize substantive federal law. *Garrett* merely held that a state law doctrine concerning the validity of a release of liability signed by a seaman could not be applied to cases arising in admiralty under the federal Merchant Marine Act, also known as the Jones Act, 46 U.S.C. §688.

In *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, ___ U.S. ___, 113 S.Ct. 1160 (1993) the only issue was "whether a federal court may apply a 'heightened pleading standard' – more stringent than the usual pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure – in civil rights cases alleging municipal liability . . . " *Leatherman, supra,* 1161. This Court held that the "heightened pleading standard" was inconsistent with Federal Rule 8(a), which is uniformly applicable to all federal civil actions (except as otherwise provided at F.R.Civ.P. 81) and requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." This Court found no authority in statute or rule to distinguish federal pleading standards for civil rights cases from all other cases. The Court did note that F.R.Civ.P. 9(b) imposes particularity requirements upon complaints alleging fraud or mistake, but did not set forth a differing standard for civil rights claims

against governmental entities. This Court stated as follows:

> Perhaps if Rules 8 and 9 were rewritten today, claims against municipalities under §1983 might be subjected to the added specificity requirements of Rule 9(b). But that is a result which must be obtained by the process of amending the Federal Rules, and not by judicial interpretation.

Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, supra, 1163. Thus, *Leatherman* required only a uniform application of the Federal Rules of Civil Procedure by federal courts to all classes of civil action, including civil rights actions. *Leatherman* does *not* require the application of the Federal Rules of Civil Procedure in state courts whenever a federal cause is there filed. Moreover, the rule of uniform application has not been offended here, since federal causes filed in Pennsylvania courts are only examined against the same pleading standards applicable to all other cases under the Pennsylvania Rules of Civil Procedure.

The Petitioners make no effort to show how any Pennsylvania Rule of Civil Procedure unduly burdened the presentation of their case in state court. Their grievance is simply that their Second Amended Complaint, state claims and federal claims alike, was dismissed for failure to state any claim. A result unwanted by the Petitioners does not without more establish that the process which led to that result was unconstitutional. Petitioners assert in a vacuum that their Complaint would have satisfied the pleading standards of F.R.Civ.P. 8(a). However, the deficiency of the Petitioners' Complaint

even against the standard of F.R.Civ.P. 8(a) need not be demonstrated here in order to show that the dismissal by the Pennsylvania Courts was entirely proper, since nothing in the Pennsylvania Rules of Civil Procedure imposed any burden upon Petitioners such that their opportunity to present their federal claim was unconstitutionally frustrated under either the Fourteenth Amendment or the Supremacy Clause. No such burden has been identified by the Petitioners.

CONCLUSION

For the reasons set forth above it is respectfully requested that the Supreme Court deny the Petition For Writ of Certiorari.

Respectfully submitted,

WILLIAM A. FETTERHOFF, Esq.
Counsel of Record
200 N. Third Street, Suite 800
Harrisburg, PA 17101
(717) 232-7722

JOSHUA D. LOCK, Esq.
106 Walnut Street
Harrisburg, PA 17101
(717) 234-7025

Attorneys for Respondents: Dauphin County MH/MR Case Management Unit, Dauphin County Counseling Center, Gantt, Bard, Minnix, Loomis, Reisinger, Dunlap, and Urban

Dated: March 5, 1996

APPENDIX A

OPINION AND ORDER OF THE DAUPHIN COUNTY COURT OF COMMON PLEAS FILED SEPTEMBER 20, 1993

DIANN HARRIS CARTER, JOANNA FOSTER, JOYCE WATERS, GWENDOLYN TOWLES MANNING, DR. ROSEMARY MADL, MARILYN R. LOVELL, CATHY CONSLA, and RODGER L. BEATTY, Plaintiffs	:	IN THE COURT OF COMMON PLEAS DAUPHIN COUNTY, PENNSYLVANIA
vs.	:	NO. 2271 S 1992
STANLEY MROZOWSKI, RALPH MOYER, JEFFREY PICOLLA, GARY BEESE, JOHN THOMAS, DAHL KROW, MARK BARTON, LARRY DECKER, DEBORAH GANTT, PATRICIA BARD, WENDY MINNIX, LYNN LOOMIS, SANDY REISINGER, KELLY DUNLAP, IRENE URBAN, Individually; BOSWELL, SNYDER, TINTNER & PICCOLA, a law firm, EDGEWATER PSYCHIATRIC CENTER, NORTHWESTERN CORPORATION, DAUPHIN COUNTY MENTAL HEALTH AND MENTAL RETARDATION CASE MANAGEMENT UNIT and DAUPHIN COUNTY MENTAL HEALTH & MENTAL RETARDATION COUNSELLING, PRIVATE CORPORATIONS and DAUPHIN COUNTY, a local government entity, Defendants	:	CIVIL ACTION – LAW

BEFORE: MORGAN, TURGEON and KLEINFELTER, JJ.

OPINION

This matter comes before the court on defendants' preliminary objections to plaintiffs' complaint. The instant action arises from Dauphin County's decision not to renew its contract with the Rosalie G. Handler Center, a provider of mental health and mental retardation services. The facts in this case were difficult to ascertain as a result of the skeletal and conclusory nature of plaintiffs' complaint, but we have been able to glean the following facts from plaintiffs' complaint.

The amended complaint[1] alleges that the plaintiffs[2] were all employed in various positions at the Rosalie G. Handler Center until their dismissal on June 15, 1990. Plaintiffs aver that they were dismissed because of their race, sex and/or sexual orientation and were replaced by white males, all of whom were not homosexual, and were less qualified and capable than the plaintiffs. Plaintiffs state that their rights to substantive and procedural due process and equal protection of the laws were violated by the defendants[3], who were government employees acting

---

[1] Plaintiffs' original complaint was filed on June 3, 1992. An amended complaint was filed on June 4, 1992. The only difference between the original and amended complaints was that one of the named plaintiffs, Lucy Bibby, was dropped from the action.

[2] Plaintiffs are Diann Carter, Joanna Foster, Joyce Waters, Gwendolyn Manning, Lucy Bibby, Deborah Alger, Frances Manning, Dr. Rosemary Madl, Marilyn Lovell, Cathy Consla, and Rodger Beatty.

[3] Defendants are Stanley Mrozowski, Administrator, Dauphin County Mental Health and Mental Retardation Program; Ralph Moyer, Director of Dauphin County Human

under color of state law, and who illegally agreed among themselves to destroy, harass, and defame plaintiffs because of their race, sex or sexual orientation.

In the amended complaint, plaintiffs claim that they do not know the precise dates or times when the defendants conducted meetings to discuss their plans to harm the plaintiffs and destroy the Handler Center, but that "an unlawful combination for unlawful purposes was participated in by all defendants" from 1989 until June 15, 1990. (Paragraph 47) Plaintiffs continue by alleging that defendants Stanley Mrozowski, Administrator of the Dauphin County Mental Health & Mental Retardation Program, and Ralph Moyer, Director of Dauphin County Human Services, both made defamatory statements with respect to the conduct and qualifications of the plaintiffs in an effort to discredit them, knowing the statements to be untrue. The amended complaint avers that defendant Moyer made the statement "we're going to get rid of

---

Services; Jeffrey Piccola, State Representative and member of the law firm of Boswell, Snyder, Tintner & Piccola; John Thomas, a social worker at Edgewater Psychiatric Center; Dahl Krow, a contract monitor for Dauphin County; Mark Barton, a mental health specialist for Dauphin County, Gary Beese, a manager for the Office of Mental Health Mental Retardation of the Department of Public Welfare; Larry Decker, an employee of the Department of Public Welfare; Deborah Gantt, Sandy Reisinger, and Kelly Dunlap, case managers at Rosalie G. Handler Center; Patricia Bard and Wendy Minnix, therapists at Rosalie G. Handler Center; Lynn Loomis, a case management supervisor at the Handler Center; Irene Urban, the fiscal coordinator at the Handler Center; Boswell, Snyder, Tintner & Piccola, the Edgewater Psychiatric Center, the Northwestern Corporation, the Dauphin County Mental Health and Mental Retardation Counseling and Dauphin County.

them", referring to plaintiffs, to Dauphin County Commissioner Peters in early 1990. (Paragraph 51)

Plaintiffs also claim that defendants Gantt, Bard, Minnix, Loomis, Reisinger, Dunlap, and Urban, all employees of the Handler Center, made defamatory statements attacking their supervisors, knowing that their accusations were false. (Paragraphs 58-64) According to the complaint, defendant Jeffrey Piccola, a member of the Harrisburg law firm of Boswell, Snyder, Tintner & Piccola, carried these defamatory statements, which were unverified, to the floor of the Pennsylvania House of Representatives, where he made reference to them and discussed them with reporters for the Harrisburg *Patriot News*.

Additionally, defendants Larry Decker, a DPW-OMH Licensure representative for the DPW Central Regional Office, and Gary Beese, a community program manager for the Commonwealth of Pennsylvania Community Mental Health Services, are alleged to have used their authority over licensing procedures in Pennsylvania to create grounds for defendants Mrozowski, Moyer, DCMHC, and Dauphin County to charge mismanagement at Handler. Plaintiffs also aver that defendant Thomas, an employee of defendant, Edgewater Psychiatric Hospital, generated false reports of mismanagement at Handler by claiming that defendant Foster, an employee at the Handler Center, was not attending aftercare follow-up meetings. Plaintiffs claim that all of the above defamatory statements were made by the defendants in an effort to establish that Handler was mismanaged so that Edgewater Psychiatric Center, which was in serious financial difficulty from 1988 through June

15, 1990, could gain access and control of Handler's partial program and case management resources.

Dauphin County notified the Handler Center that it would not be renewing its contract upon its expiration on June 30, 1990. On June 15, 1990, Judge James Buckingham issued orders authorizing Dauphin County to have the full use and occupancy of all premises leased, owned or occupied by the Handler Center. The order also transferred all county owned equipment and supplies, including client files and records, from Handler to the county. (See Order, Supplemental Order and Third Supplemental Order, 4880 Equity 1990)

As a result of the above court order, plaintiffs claim that they were physically forced out of their offices without warning and their rights to be secure in their person and property were violated. Plaintiffs' complaint alleges that the Handler Board was told that if it failed to sign over all of its assets immediately, criminal charges would be brought against one of the plaintiffs, Dr. Rosemary Madl. Plaintiffs claim that the Handler Board dissolved the Rosalie Handler Center in July 1992 as a result of defendant Piccola and other defendants publicly proclaiming that "the Handler Board is rotten to the core." (Paragraph 86)

Plaintiffs' complaint consists of fifteen counts. Counts I & II allege violations of civil rights pursuant to 42 U.S.C. §1983. Counts III and IV aver violations of civil rights pursuant to 42 U.S.C. §1985 and 42 U.S.C. §1981. Count V is a claim for civil conspiracy to defame plaintiffs. Counts VI-XIII are all claims for defamation. Count XIV is an allegation of wrongful discharge. Finally, Count

XV alleges a violation of Harrisburg Ordinance 6-1983. All of the defendants filed preliminary objections in the nature of demurrers and motions for more specific pleadings.

The issues before this court are as follows: (1) Does plaintiffs' complaint state a cause of action against any of the defendants for violation of their civil rights pursuant to 42 U.S.C. §1983, 42 U.S.C. §1985, or 42 U.S.C. §1981? (2) Can plaintiffs set forth a cause of action for civil conspiracy? (3) Have plaintiffs alleged a cause of action against any of the defendants for defamation? (4) Does plaintiff's complaint state a cause of action for wrongful discharge? (5) Have plaintiffs alleged a violation of Harrisburg Ordinance 6-1983?

The factual allegations in plaintiffs' complaint are sketchy at best and do not provide us with a complete factual background in the instant case, but we are constrained to accept the facts provided in plaintiffs' complaint when ruling on demurrers. "[A] preliminary objection in the nature of a demurrer is deemed to admit all well-pleaded facts and all inferences reasonably deducted therefrom. (Citation omitted) In determining whether to sustain a demurrer, the court need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion." *Giffin v. Chronister,* ___ Pa. Comwlth. ___, ___, 616 A.2d 1070, 1072 (1992).

After a thorough review of plaintiffs' complaint and the defendants' preliminary objections, we find that as a result of the numerous conclusory allegations in plaintiffs' complaint, plaintiffs have failed to set forth causes

of action under any of the 15 counts pled in the complaint. We will now address the deficiencies in these counts.

Beginning with the civil rights claims, Counts I and II of plaintiffs' complaint allege violations of plaintiffs' civil rights pursuant to 42 U.S.C. §1983. Section 1983 provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

In order to establish a Section 1983 claim against a municipality or county, the following requirements must be met; first, there must be an allegation that the complained of action was a policy, practice, or custom of the municipality or county; second, the alleged actions of all defendants must be "under color of state law"; and third, the plaintiffs must allege the existence of a protected right entitling them to protection under the equal protection or due process clauses of the 14th Amendment.

Addressing the first requirement, whether the action is a policy or practice of the municipality, the U.S. Supreme Court in *Monell v. Department of Social Services,*

436 U.S. 658, 56 L.Ed. 2d 611, 98 S.Ct. 2018 (1978) held that a municipality cannot be held liable in Section 1983 actions on the basis of respondeat superior:

> A local government may not be sued under §1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under §1983.

Monell, 436 U.S. at 694, 56 L.Ed. 2d at 638, 98 S.Ct. at 2037-2038.

In *Pembaur v. City of Cincinnati,* 475 U.S. 469, 89 L.Ed. 2d 452, 106 S.Ct. 1292 (1986), the Supreme Court further elaborated upon this reasoning and outlined specifically when a municipality can be held liable.

> Municipal liability attaches only where the decisionmaker possesses final authority to establish municipal policy with respect to the action ordered. The fact that a particular official – even a policy-making official – has discretion in the exercise of particular functions does not, without more, give rise to municipal liability based on an exercise of that discretion. (citations omitted) The official must also be responsible for establishing final government policy respecting such activity before the municipality can be held liable.

Pembaur, 475 U.S. at 481-483 L.Ed 2d at 464-465, 106 S.Ct. at 1299-1300.

In the instant action, there are no allegations in plaintiffs' amended complaint that Dauphin County or any of the other defendants had a policy, custom, or practice violative of any civil right or that an official with final authority to make such a policy acted on behalf of Dauphin County or any of the other defendants. Having established that plaintiffs failed to satisfy one of the requirements for a Section 1983 action, we need not reach the other two requirements. We caution plaintiffs, however, that the amended complaint fails to adequately allege that defendants were acting under color of state law or that plaintiffs have a protected right.

With respect to plaintiffs' Section 1985 claim,[4] Section 1985 proscribes conspiracies that interfere with a) the performance of official duties by federal officers, b) the administration of justice in federal courts c) the administration of justice in state courts d) the private enjoyment of "equal protection of the laws" and "equal privileges and immunities under the laws" and e) the right to support candidates in federal elections. *Kush v. Rutledge,* 460

---

[4] Although plaintiffs' fail to designate which subsection of section 1985 they are relying upon, it appears that their claim is based upon section 1985(3) which provides as follows:

> If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; . . .

U.S. 719, 75 L.Ed 2d 413, 103 S.Ct. 1483 (1983). Three of these five categories clearly relate to the federal government and are inapplicable in the instant case since plaintiffs' amended complaint contains no allegations of federal involvement. Plaintiffs fail to plead with sufficient specificity, however, how the defendants have violated the other two categories concerning conspiracies to interfere with the administration of justice in state courts and the private enjoyment of equal protection under the laws.

The plaintiffs must file a detailed factual pleading to establish a cause of action under Section 1985(3). In *Fuller v. Harding*, 699 F.Supp. 64 (E.D. Pa. 1988) *aff.* 875 F.2d 310 (3d Cir. 1989) the court held that "[b]road and conclusory allegations, without some form of factual support, will not state a claim based on a conspiracy pursuant to 42 U.S.C. §1983 or §1985(3)". (citations omitted) 699 F.Supp. at 67. *See also, Fletcher v. Hook*, 446 F.2d 14 (3d Cir. 1971).

Count III of plaintiffs' amended complaint fails to satisfy the specificity requirement because it contains only conclusory allegations. Plaintiffs' complaint avers that "defendants were unlawful in that the defendants agreed to cooperate together for the unlawful purpose of depriving plaintiffs of their rights to enjoy the rights, privileges and immunities of the Constitution and laws of the United States of America pursuant to 42 U.S.C. 1985." In paragraph 47, plaintiffs also concede that they "do not know the precise dates or times of meetings among defendants at which deliberate or intentional plans to harm and injure plaintiffs . . . occurred." Plaintiffs only aver that all defendants participated in an unlawful combination for unlawful purposes, but they fail to allege which defendants were involved in the conspiracy, when

and where the meetings among defendants took place and the subject matter of such meetings.

Turning to Count IV of plaintiffs' amended complaint, plaintiffs Carter, Foster, Waters, and Manning (all African-American citizens) assert a Section 1981 claim alleging the unlawful termination of "duly executed contracts for employment with Handler." Section 1981 provides as follows:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

Although plaintiffs aver the existence of "duly executed contracts for employment with Handler" in paragraph 109 of the amended complaint, they fail to attach copies of the contract to the complaint. A question, therefore, clearly exists as to whether the plaintiffs had contracts or were merely at-will employees of Handler. We recognize that plaintiffs' failure to attach copies of the contracts to the complaint technically violates Rule 1019(h), but rather than relying upon a technical deficiency is deciding plaintiffs' claim, we will reach the merits of the Section 1981 claim.

Assuming that plaintiffs did have contracts with the Handler Center in 1989 and 1990, Section 1981 would still be inapplicable to the instant case because Section 1981

only prohibits refusals to enter into a contact or to offer to make a contract on discriminatory terms. In *Patterson v. McLean Credit Union*, 491 U.S. 164, 105 L.Ed 2d 132, 109 S.Ct. 2363 (1989), the Supreme Court addressed the applicability of Section 1981 to breach of contracts and held that the breach of a contract is post-formation conduct that is not actionable under Section 1981. *Patterson*, 491 U.S. at 176-177, 105 L.Ed 2d at 150-151, 109 S.Ct. at 2372-2373. *See also, Courtney v. Canyon Television and Appliance Rental*, 899 F.2d 845 (9th Cir. 1990). *Lavender v. V & B Transmission and Auto Repair*, 897 F.2d 805, 807-808 (5th Cir. 1990).

Although the Civil Rights Act was amended in 1991 to include the modification and termination of contracts, this would not affect the instant case because subsequent cases have held that the Civil Rights Act of 1991 should not be applied retroactively because such would result in manifest injustice. *Blanding v. Pennsylvania State Police*, 811 F.Supp. 1084, (E.D. Pa. 1992), *Ribando v. United Airlines, Inc.*, 787 F.Supp. 827 (N.D. Ill. 1992); *Sofferin v. American Airlines, Inc.*, 785 F.Supp. 780 (N.D. Ill. 1992). The alleged discriminatory action in this case took place between 1989 and June 15, 1990. This was clearly before the Civil Rights Act was amended in 1991, and therefore *Patterson* would be the applicable law in the instant case.

Having addressed plaintiffs' civil rights claims, we now turn to the second issue, plaintiffs' claim of civil conspiracy. In Count V, plaintiffs aver that the defendants "unlawfully agreed to defame plaintiffs and planned to deprive plaintiffs of their positions knowingly, with malice aforethought, for the unlawful purpose of causing plaintiffs' wrongful discharge and of replacing plaintiffs

in their employment, and to discriminate against and harm plaintiffs on account of their race, sex, and/or sexual preference . . . " (Paragraph 112)

This type of broad conclusory allegation will to support a claim for conspiracy. "As a rule, conspiracy must be pleaded with specificity." *Realco Services, Inc. v. Holt,* 479 F.Supp. 880, 884 (E.D. Pa. 1979). Additionally, " '[a] conspiracy claim based upon § 1985(3) requires a clear showing of invidious, purposeful and intentional discrimination between classes or individuals.' " (citations omitted) *Robinson v. McCorkle,* 462 F.2d 111, 113 (3d. Cir. 1972). In *McDermott v. Russell,* 523 F.Supp. 347 (E.D. Pa. 1981), the district court outlined the requirements for establishing a claim of conspiracy and held, "[u]nder Pennsylvania law a civil conspiracy is 'a combination of two or more persons to do an unlawful or criminal act or to do a lawful act by unlawful means or for an unlawful purpose.' " *Id.,* 523 F.Supp. at 351 (citing *Landau v. Western Pennsylvania National Bank,* 445 Pa. 217, 224, 282 A.2d 335, 341 (1971))

In the instant case, plaintiffs have clearly failed to plead material allegations sufficient to support a claim for civil conspiracy. Plaintiffs do not aver which defendants were specifically involved in the conspiracy, the dates when or the places where the defendants conspired to harm the plaintiffs, or the unlawful conduct in which the defendants supposedly participated.

With respect to the third issue, plaintiffs' eight counts alleging defamation, we find that plaintiffs have failed to establish the necessary elements to maintain causes of action for defamation against any of the defendants. A

defamation action must allege: "(1) the defamatory character of the communication; (2) publication; (3) that the communication refers to the plaintiff; (4) the third party's understanding of the communication's defamatory character; and (5) injury." *Sugarman v. RCA Corp.*, 639 F.Supp. 780, 786 (M.D. Pa. 1985). (citations omitted) Additionally, a complaint for defamation must provide the requisite particularity regarding the alleged defamatory statement. *Spain v. Vicente*, 315 Pa. Super. 135, 141, 461 A.2d 833, 836 (1983).

In Counts VI-XIII, plaintiffs fail to identify the words or subjects of the alleged defamatory statements, the persons to whom these defamatory statements were published, the manner in which the communications refer to the plaintiffs, and the third party's understanding of the communications' defamatory character. Without these specific factual averments, plaintiffs have failed to state a cause of action for defamation.

Addressing the fourth issue, we find that plaintiffs' conclusory allegations fail to state a cause of action for wrongful discharge. When evaluating an action for wrongful discharge,

> the threshold inquiry is whether or not the employment was at will. If it was, then the discharge is not reviewable in a judicial forum. An exception is that the discharge will be reviewable in a judicial forum when there is sufficient evidence to suggest that it was against public policy or made with the specific intent to harm the employee.

Veno v. Meredith, 357 Pa. Super. 85, 97, 515 A.2d 571, 577 (1986).

Although the plaintiffs could here argue that they fall into the public policy exception for at will employees, since they allege that their discharge was motivated by discrimination based on race or sex; nevertheless, plaintiffs' discriminatory allegations remain conclusory in nature and are lacking in sufficient factual averments. Plaintiffs' complaint avers only that "[a]ll plaintiffs were replaced after June 15, 1990" (Paragraphs 42-43) and "[o]n June 15, 1990 all plaintiffs were summarily dismissed from their positions at Handler without just cause." (Paragraph 45)

One of the few references the plaintiffs make to defendants involves an allegation "that the forcible removal of plaintiffs from their employment and their termination of employment by the sheriff of Dauphin County constituted a wrongful discharge of plaintiffs by the defendants by virtue of the defendants take over of Handler." (Paragraph 92) The sheriff, however, was acting pursuant to a supplemental order of court issued by Judge Buckingham on June 15, 1990 (4880 Equity 1990) when plaintiffs claim that they were "forcibly removed" from the Handler Center. The order of June 15, 1990 provided as follows:

> The Sheriff of Dauphin County is hereby authorized, upon request by either party to take such action as may be necessary to enforce both this Supplemental Order and such other orders as are entered without further direction by the Court, including, but not limited to, the safety and security of the personnel essential to the performance or the execution of this Order, and the property of the County of Dauphin, and the

> defendant and all premises within which the same is occupied and located.

The sheriff's actions, therefore, did not constitute the wrongful discharge of the plaintiffs. The plaintiffs have failed to specifically allege what actions were taken by the defendants which resulted in the plaintiffs' wrongful discharge.

Additionally, there are no allegations in plaintiffs' amended complaint that the plaintiffs received notice of their termination from any of the defendants. Plaintiffs only aver that as a result of threats from the defendants, the Handler Board dissolved the Handler Center (Paragraph 86). Plaintiffs also fail to aver that any of them applied for work at Dauphin County after June 15, 1990 or that any of them returned to work on June 18, 1990 and were refused employment.

The final issue concerns whether plaintiffs have stated a cause of action under the Harrisburg Human Relations ordinance. The Harrisburg city ordinance concerning "Human Relations and Discrimination", Article 725, Codified Ordinances of the City of Harrisburg, Ord. 6-1983, March 8, 1983, as amended does not provide for a private cause of action in the Court of Common Pleas except in connection with the enforcement of an order first being issued by the Harrisburg Human Relations Commission. Section 725.15, concerning enforcement and judicial review, provides as follows:

> 725.15 Enforcement and Judicial Review.
>
> The complainant, the City Solicitor or the Commission may secure enforcement of the order of the Commission or other appropriate

> relief by the Court of Common Pleas of Daughin County. When the Commission has heard and decided any complaint brought before it, enforcement of its order shall be initiated by the filing of a petition in such court, together with a transcript of the record of the hearing before the Commission, and issuance and service of a copy of such petition as in proceedings in equity. When enforcement of a commission order is sought, the court may make and enter, upon the pleadings, testimony and proceedings set forth in such transcript, an order or decree enforcing, modifying and enforcing as so modified, or setting aside, in whole or in part, the order of the Commission, and the jurisdiction of the court shall not be limited by acts pertaining to equity jurisdiction of the courts. An appeal may be taken as in other civil actions.

In the instant case, plaintiffs have not averred that an order was issued from the Commission, and therefore the plaintiffs have failed to set forth a cause of action pursuant to the Harrisburg Human Relations ordinance.

Although plaintiffs have failed to state causes of action under any of their fifteen counts, we will give plaintiffs leave to amend their complaint with respect to those counts capable of being cured by amendment. In *Framlau Corporation v. Delaware County*, 223 Pa. Super. 272, 276, 299 A.2d 335, 337 (1972), the court noted

> "[i]n the event a demurrer is sustained because a complaint is defective in stating a cause of action, if it is evident that the pleading can be cured by amendment, a court may not enter final judgment, but must give the pleader an opportunity to file an amended complaint.

(citation omitted) This is not a matter of discretion with the court but rather a positive duty."

Plaintiffs are given leave to amend all of the courts in their amended complaint except Count IV. Relying upon the reasoning in *Patterson, supra,* this court finds that there are no set of facts which plaintiffs could allege which would enable them to state a cause of action as a matter of law pursuant to Section 1981.

For the foregoing reasons we enter the following

ORDER

AND NOW, this 20th day of September, 1993, defendants' demurrers to Counts I-XV are granted. Plaintiffs are given leave to amend the following counts: Counts I and II, alleging violations of 42 U.S.C. § 1983. Count III alleging a violation of 42 U.S.C. 1985, Counts V-XIII, alleging defamation, Count XIV, alleging wrongful discharge, and Count XV alleging a violation of Harrisburg Ordinance 6-1985. Plaintiffs are not given leave to amend Count IV, alleging a violation of 42 U.S.C. § 1981.

BY THE COURT:

/s/ Joseph H. Kleinfelter
Joseph H. Kleinfelter, Judge

DIANN HARRIS CARTER, JOANNA FOSTER, JOYCE WATERS, GWENDOLYN TOWLES MANNING, DR. ROSEMARY MADL, MARILYN R. LOVELL, CATHY CONSLA, and RODGER L. BEATTY,	:	IN THE COURT OF COMMON PLEAS DAUPHIN COUNTY, PENNSYLVANIA
Plaintiffs	:	NO. 2271 S 1992
vs.	:	
STANLEY MROZOWSKI, RALPH MOYER, JEFFREY PICCOLA, GARY BEESE, JOHN THOMAS, DAHL KROW, MARK BARTON, LARRY DECKER, DEBORAH GANTT, PATRICIA BARD, WENDY MINNIX, LYNN LOOMIS, SANDY REISINGER, KELLY DUNLAP, IRENE URBAN, Individually; BOSWELL, SNYDER, TINTNER & PICCOLA, a law firm, EDGEWATER PSYCHIATRIC CENTER, NORTHWESTERN CORPORATION, DAUPHIN COUNTY MENTAL HEALTH AND MENTAL RETARDATION CASE MANAGEMENT UNIT and DAUPHIN COUNTY MENTAL HEALTH & MENTAL RETARDATION COUNSELLING, PRIVATE CORPORATIONS and DAUPHIN COUNTY, a local government entity.	:	CIVIL ACTION – LAW
Defendants	:	

BEFORE: MORGAN, TURGEON and KLEINFELTER, JJ.

ORDER

AND NOW, this 20th day of September, 1993, defendants' demurrers to Counts I-XV are granted. Plaintiffs are given leave to amend the following counts: Counts I and II, alleging violations of 42 U.S.C. § 1983. Count III alleging a violation of 42 U.S.C. 1985, Counts V-XIII, alleging defamation, Count XIV, alleging wrongful discharge, and Count XV alleging a violation of Harrisburg Ordinance 6-1985. Plaintiffs are not given leave to amend Count IV, alleging a violation of 42 U.S.C. § 1981.

BY THE COURT:

/s/ Joseph H. Kleinfelter
Joseph H. Kleinfelter, Judge

Distribution:

Edward J. Feinstein, Esquire, One Mellon Bank Ctr., 500 Grant Street, Suite 2320, Pittsburgh, PA 15219

Joshua D. Lock, Esquire, 106 Walnut Street, Hbg. PA 17101

William A. Fetterhoff, Esquire, 240 N. Third Street, Suite 203, Hbg. PA 17101

Don Bailey, Esquire, Olde English Gap, 845 Sir Thomas Ct., Suite 9, Hbg. PA 17109

Stephen L. Grose, Esquire, 210 Walnut Street, Hbg. PA 17108

Thomas J. Williams, Esquire, 10 E. High Street, Carlisle, PA 17103

Frank Lavery, Esquire, 130 Locust Street, Suite 300, Hbg. PA 17108

Gwendolyn T. Mosley, Esquire, 15th Flr., Strawberry Square, Hbg. PA 17120

James G. Nealon, III, Esquire, 3631 N. Front Street, Hbg. PA 17101

APPENDIX B

PENNSYLVANIA RULE OF CIVIL PROCEDURE 1019

RULE 1019. CONTENTS OF PLEADINGS. GENERAL AND SPECIFIC AVERMENTS

(a) The material facts on which a cause of action or defense is based shall be stated in a concise and summary form.

(b) Averments of fraud or mistake shall be averred with particularity. Malice, intent, knowledge, and other conditions of mind may be averred generally.

(c) In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of such performance or occurrence shall be made specifically, and with particularity.

(d) In pleading an official document or official act, it is sufficient to identify it by reference and aver that the document was issued or the act done in compliance with law.

(e) In pleading a judgment, order or decision of a domestic or foreign court, judicial or administrative tribunal, or board, commission or officer; it is sufficient to aver the judgment, order or decision without setting forth matter showing jurisdiction to render it.

(f) Averments of time, place and items of special damage shall be specifically stated.

(g) Any part of a pleading may be incorporated by reference in another part of the same pleading or in

another pleading in the same action. A party may incorporate by reference any matter of record in any State or Federal court of record whose records are within the county in which the action is pending, or any matter which is recorded or transcribed verbatim in the office of the prothonotary, clerk of any court of record, recorder of deeds or register of wills of such county.

(h) A pleading shall state specifically whether any claim or defense set forth therein is based upon a writing. If so, the pleader shall attach a copy of the writing, or the material part thereof, but if the writing or copy is not accessible to him, it is sufficient so to state, together with the reason, and to set forth the substance of the writing.

APPENDIX C

EMPLOYEES OF ROSALIE G. HANDLER CENTER AND SUCCESSOR AGENCIES BY RACE AND GENDER

Non-Returning Employees of the Rosalie G. Handler Center as Listed in the Final Settlement Agreement Dated July 24, 1990

Name	Race
Deborah Alger	W
Roger Beatty	W
Diann Harris-Carter	B
Cathy Consla	W
Joanna Foster	B
David Fyke	W
Debra Good	W
Mary Kinsinger	W
Zoe Klinger	W
Richard Laban	W
Marilyn Lovell	W
Margie MacDonald	H
Rosemary Madl	W
Frances Manning	W
Gwendolyn Towles-Manning	B
Lisa Minner	B
Carol Omiros	W
Matthew Riley	W
Joan Shank	W
Joan Schuck	W
Joyce Waters	B
Yolanda Waters	B

Totals: 22
15 White
6 Black
1 Hispanic

Black Employees Returning to Work on June 18, 1990

The following lists set forth the names of those black employees of the Rosalie G. Handler Center as of Friday, June 15, 1990 who either returned to work or did not return to work on Monday morning, June 18, 1990:

Returned	Failed to Return
1. Joseph Sackey	1. Diann Harris Carter
2. Tammy Wright	2. Joanna Foster
3. Larry Dyson	3. Gwendolyn Towles-Manning
4. Bryant Haynes	4. Joyce Waters
5. Sharon Carey	5. Yolanda Waters
6. Barbara Tatum	6. Lisa Minner
7. James Graham	
8. Stacey Baxley	
9. Thomas Moore	
10. Sandy Lee Jones	

1. Rosalie G. Handler Center Employees, by Race as of June 15, 1990

Alger	W	Graham	B	Pelton	W
Baxley	B	Graybill	W	Piccio	W
Beahm	W	Harrison	W	Rissinger	W
Beatty	W	Haynes	B	Riley	W
Bostdorf	W	Jones	B	Robinski	W
Boyer	W	Leban	W	Sacky	B
Brandt	W	Lenker	W	Sausman	W
Brown	W	Jenkins	W	Schuck	W
Bufflap	W	Kessler	W	Segal	W
Carey	W	Kinsinger	W	Shank, J.	W
Carl	W	Kistler	W	Shoop	W
Carter	B	Klinger	W	Tatum	B
Cassell	W	Kraft	W	Teeter	W
Christ	W	Lovell	W	Vogl	W
Clark	W	MacDonald	H	Walker	W
Consla	W	Madl	W	Waters, J.	B
Dunlap	W	Magel	W	Waters, Y.	B
Dyson	B	Manning, F.	W	Wentworth	W
Flemming	W	Manning, G.	B	White	W
Foster	B	Meyer	W	Wright	B
Fyke	W	Minner	B	Young	B
Gantt	W	Motter	W	Zeiders	W
Gomez	H	Moore	B	Zug, B.	W
Good	W	Nester	W	Zug, S.	W
Grady	B	Omiros	W		

Total: 74
White: 57 (77%) Black: 15 (20%) Hispanic: 2 (3%)

2. Rosalie G. Handler Center Employees, by Race Separated During the Period April 1 – June 15, 1990

Appleberry	B	Minnix	W
Bard	W	Reil	W
Collura	W	Stauffer	W
Jumper	W	Urban	W
Litzelman	W		

Total: 9 White: 8 Black: 1

COMBINED TOTAL: 83 White: 65 (79%) Black: 15 (18%)
Hispanic: 2 (3%)

---

1. Dauphin County Case Management Unit, Inc. Case Management Employees by Race As of September 21, 1990

Backstrom	W	Gomez	H	Shade	W
Bayne	W	Grady	B	Shenk	W
Bard	W	Graybill	W	Shoop	W
Beahm	W	Harrison	W	Smith	W
Boatright	W	Haynes	B	Tatum	B
Bostdorf	W	Jones	W	Teeter	W
Brown, L.	W	Jumper	W	Urban	W
Bufflap	W	Kessler	W	Vogel	W
Carl	W	Kraft	W	Walker	W
Carey	W	Krow	W	Weader	W
Carter	B	Lenker	W	Wentworth	W
Cassell	W	Magel	W	White	W
Clark	W	Meyer	W	Whittaker	B
Dunbar	B	Mollino	H	Wright	B
Dunlap	W	Motter	W	Vercher	B
Dyson	B	Reid	B	Wilshire	W

Farrell	W	Reisinger	W	Young	W
Flemming	W	Reisinger	W	Brown, B.	B
Felty	W	Sausman	W	Zug, S.	W
Gantt	W	Segal	W	Parmer	B

Total: 60

White: 46 (77%) Black: 12 (20%) Hispanic: 2 (3%)

2. Edgewater Psychiatric Center Partial Hospitalization Employees by Race As of September 15, 1990

Acri	W	Jones	B
Baxley	B	McGrath	W
Chan C		Moore	B

Total: 6

White: 2 (33%) Black: 3 (50%) Chinese: 1 (7%)

---

3. Mental Health Association of Cumberland/ Dauphin/Perry Counties Outpatient Employees by Race As of September 15, 1990

Jenkins	W
Zug, B.	W

Total: 2 White

COMBINED TOTAL OF THREE PROGRAMS: 68

White: 50 (74%) Black: 15 (22%) Other: 3 (4%)

Rosalie G. Handler Center Management Staff by Race and Sex as of June 15, 1990

Beatty	W M	Lovell	W F	Shuck	W F
Boyer	W F	Madl	W F	Urban	W F
Carter	B F	Manning, F.	W F	Waters	B F
Foster	B F	Manning, G.	B F	Laban	W M

Black: 33%
Female: 83%

Management Staff at Successor Agencies by Race and Sex as of September 15, 1990

Boatright	B F	McGrath	W F	Walker	W F
Gantt	W F	Sausman	W M	Weader	W F
Krow	W M	Urban	W F	Wright	B F

Black: 22%
Female: 78%